

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)
Connect America Fund	) WC Docket No. 10-90

**REPLY COMMENTS OF THE AMERICAN CABLE ASSOCIATION  
ON PROCEDURES RELATING TO AREAS ELIGIBLE FOR FUNDING AND  
ELECTION TO MAKE A STATEWIDE COMMITMENT IN PHASE II OF THE  
CONNECT AMERICA FUND**

The American Cable Association (“ACA”) respectfully submits reply comments in response to the Wireline Competition Bureau’s Public Notice seeking comment on procedures relating to areas eligible for funding and election to make a statewide commitment in Phase II of the Connect America Fund.<sup>1</sup> The Bureau proposes procedures for challenging the designation of an area on the National Broadband Map (“NBM”) and for an election by a price cap local exchange carrier (“LEC”) to make a statewide commitment to accept Phase II support.

**I. INTRODUCTION AND SUMMARY**

In its initial comments, ACA supported many aspects of the Commission’s proposed process for challenging the designation of census blocks on the NBM for purposes of determining where Phase II support may be awarded. ACA also submitted a number of changes or refinements to the Commission’s proposed process. In brief, ACA –

- Supported the Commission’s proposal to use 3 Mbps/768 kbps as a proxy on the NBM for 4/1 Mbps in developing the initial list of eligible areas, and to require a party challenging the designation to present evidence demonstrating whether this proxy speed is being provided.

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<sup>1</sup> See Public Notice, DA 12-2075 (Dec. 27, 2013).

- Agreed with the Commission that the preliminary list of eligible census blocks would only include those that are completely unserved, and challenges would only be permitted on the census block level (and not on a sub-census block level).
- Argued that while the non-speed criteria (i.e., latency, capacity and price) are part of the public interest obligations for broadband providers, because these criteria have not been precisely defined, the Commission should not use them as a basis for a challenge to the NBM at this time.
- Proposed that the Commission refine its proposed challenge process and evaluation by –
  1. Presuming the NBM is accurate and placing the initial burden on those challenging NBM designations.
  2. Requiring a price cap LEC at the time a challenge is filed to inform (via certified mail) providers designated as serving the “challenged” census block on the NBM.
  3. Having the Commission determine whether the price cap LEC’s evidence for each census block is sufficient to make a prima facie case that the specific designation may be incorrect prior to seeking a rebuttal from the provider designated on the NBM.<sup>2</sup>
  4. Having the Commission publish a list of all census blocks that are potentially unserved because sufficient evidence was provided by the price cap LEC and asking for responses from the provider designated on the NBM.
  5. Giving the provider designated on the NBM at least 40 days to respond.
  6. In assessing evidence about whether a provider should be considered to be serving an area, requiring the Commission to include deployments that are actually in progress and where the provider has publicly announced that service will be available within a reasonable period.

In addition, in regard to the process whereby a price cap LEC makes an election, ACA opposed keeping the responses confidential prior to some later announcement by the

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<sup>2</sup> In evaluating whether a price cap LEC has submitted evidence to make a prima facie case that a specific census block is unserved, the Commission should at least require that the LEC provide documentation (as certified by an officer of the company) that it has made good faith inquiries to a competitive provider about whether it can provide service in that census block. The LEC also should provide any response to these inquiries by the competitive provider. In addition, the Commission should require the LEC to provide documentation that it has made good faith inquiries about any advertisements and other offers of service from the competitive provider that covers the relevant service area, including review of the provider’s website. Finally, the Commission should consider adopting measures to discourage the filing of speculative challenges.

Commission because this information is relevant to ACA members who are in the process of planning future “unsupported” deployments in these areas. Further, ACA agrees with the Commission that a price cap LEC should submit a preliminary deployment plan at the time it accepts a statewide commitment. This plan should include at least information showing both census blocks and unserved locations within those blocks where support will be used for broadband deployments, locations that will receive 6/1.5 Mbps service, and the proposed timeline for deployment. The plan also should include locations where the price cap LEC will be using Phase I support (either frozen legacy or incremental support) to deploy broadband service.

The positions taken by ACA in its comments were generally consistent with those expressed by the National Cable & Telecommunications Association and the Wireless Internet Service Providers Association in their comments.<sup>3</sup> In contrast, the United States Telecom Association (“USTelecom”) and the group of rural trade associations (“Rural Associations”) argued in their comments that the NBM has so many inaccuracies that the Commission should effectively begin *de novo*, undertaking a review of each census block designated as served on the NBM to determine whether it is in fact served.<sup>4</sup> More specifically, USTelecom proposed a four step process that would begin with state mapping authorities contacting all broadband providers that have submitted data and posing a series of questions to them about whether they were providing broadband service meeting each element of the Commission’s public interest

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<sup>3</sup> See Comments of the National Cable & Telecommunications Association, WC Docket No. 10-90 (Feb. 19, 2013) and Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90 (Feb. 19, 2013).

<sup>4</sup> See Comments of the United States Telecom Association, WC Docket No. 10-90 (Feb. 19, 2013) (“USTelecom Comments”) and Comments of the National Telecommunications Cooperative Association, the National Exchange Carrier Association, Inc., and the Western Telecommunications Alliance, WC Docket No. 10-90 (Feb. 19, 2013) (“Rural Associations Comments”).

obligations.<sup>5</sup> The Rural Associations set forth an even more elaborate process involving an evidentiary hearing before a state regulatory commission with the competitive provider having the burden of demonstrating by clear and convincing evidence that it is providing broadband service in accordance with the public interest obligations, will comply with all reporting and monitoring requirements, and does not receive high-cost support or cross-subsidize its service.<sup>6</sup>

ACA opposes the challenge process proposals of USTelecom and the Rural Associations.<sup>7</sup> First, while it shares their objective to ensure the NBM is accurate and their concerns about the accuracy of current classifications of census blocks as either served or unserved, the State Broadband Initiative, which underlies the mapping effort, contains a verification process limiting errors,<sup>8</sup> and the Commission in this proceeding has proposed a

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<sup>5</sup> See USTelecom Comments at 5-7.

<sup>6</sup> See Rural Associations Comments at 9-11.

<sup>7</sup> USTelecom argues in its comments that in permitting challenges to NBM designations of census blocks being served, the Commission should “err on the side being inclusive rather than potentially leaving unserved areas with no hope for relief in the foreseeable future.” (USTelecom Comments at 2.) As ACA argues herein, USTelecom’s approach undermines the credibility of the NBM and would lead to unnecessary challenges. In addition, while USTelecom is correct that this approach would not affect the overall budget for the Phase II program, it would increase the likelihood that scarce government resources are spent in areas where a competitive provider has already deployed qualifying broadband service.

<sup>8</sup> In regard to data verification, NTIA states (*see* [http://www2.ntia.doc.gov/files/BTOP\\_BroadbandMappingFAQs.pdf](http://www2.ntia.doc.gov/files/BTOP_BroadbandMappingFAQs.pdf)):

1. How should data provided by a company on service availability be verified?

All availability data, whether or not provided by a service provider, needs to be verified through a secondary source, such as a survey of a statistically representative sample of data, that ensures a high level of accuracy. NTIA considers that this may be best accomplished through the use of an independent validation. Please see footnote 27 in the NOFA which states, “[f]or example, a project should propose to collect availability data by address, as required the Technical Appendix, and should cross-check that data for accuracy by using at least one other metric (e.g., the location and capability of local infrastructure and whether such infrastructure could realistically serve a supposed service address, on-the-ground verification or telephone survey[]). Each method should be used to check a statistically significant sample of all addresses, and a statistically significant sample of rural addresses.” 74 Fed. Reg. 32553, n. 27 (emphasis added).

challenge process, which with refinements submitted by ACA, will increase the map's accuracy in an administrable manner. In addition, as discussed herein, the use of state mapping authorities as proposed by USTelecom and the use of state commissions as proposed by the Rural Associations are so flawed that the Commission should summarily reject those proposals. As for USTelecom's other proposals, ACA submits that some lack any supporting evidence and others would skew the process in their favor. As such, they too should be rejected.

## **II. FLAWS WITH THE USTELECOM PROPOSALS**

The challenge process proposed by USTelecom operates from the erroneous and impractical premise that state mapping authorities can be used to review all designations. These authorities have been retained by another government agency, the National Telecommunications and Information Administration ("NTIA"), pursuant to the State Broadband Initiative for the specific task of collecting data twice annually for a limited time to populate and update the NBM.<sup>9</sup> Adding the new task proposed by USTelecom would require NTIA to rewrite the contracts with each of these state authorities. It also would involve providing the authorities with additional funding, which currently does not exist and would need to be obtained by

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### **2. Who is responsible for verifying the collected data?**

States may choose any number of methods to achieve a high-level of accuracy and ensure that the project meets the transparency goals as set forth in the NOFA. If a state utilizes a contractor for the collection of data, an arm of the state equipped with statistical analysis tools could perform the verification, or the state could utilize an additional contractor who would perform the analysis. If a state intends to propose that the contractor who collects the data will also verify it, it must prove that the verification process is executed in a manner that minimizes the likelihood of a conflict of interest.

<sup>9</sup> See State Broadband Initiative at: <http://www2.ntia.doc.gov/SBDD>. The State Broadband Initiative implements the objectives of Section 6001 of the American Recovery and Reinvestment Act ("ARRA") and the Broadband Data Improvement Act. The state mapping authorities were selected and received grants to undertake the collection of broadband data pursuant to a government procurement process (Notice of Funds Availability: RIN 0660-ZA29).

Congressional authorization and appropriation.<sup>10</sup> Further, because new information would be collected, the change to the contracts would trigger a Paperwork Reduction Act review by the Office of Management and Budget. Finally, as USTelecom itself notes, the Commission could only “invite” the state authorities to undertake this task.<sup>11</sup> The Commission has no direct authority to require this action be taken. For all these reasons, the USTelecom suggestion to use the state mapping authorities should not be adopted.<sup>12</sup>

ACA now turns to respond to USTelecom’s other proposals:

**USTelecom Proposal:** Do not mandate that a price cap LEC challenging a designation serve the competitive provider and instead have the Commission create a website where all information would be submitted.<sup>13</sup>

**ACA Response:** ACA supports USTelecom’s proposal that the Commission establish a website to handle all filings for the challenge process. At the same time, it does not agree with USTelecom that price cap LECs should not serve providers designated on the NBM as serving an area. Most ACA members are small entities without regulatory departments that regularly follow Commission notices and filings and check the Commission’s website. It would place a significant burden on them to determine, even with a website dedicated to this matter, whether a price cap LEC challenged one or more of their service areas. In addition, USTelecom provides no evidence to support its argument that providing notice would be burdensome and unreliable because the NBM does not contain reliable contact information. ACA would expect the price

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<sup>10</sup> The ARRA authorized NTIA to spend up to \$350 million for the development and maintenance of the NBM.

<sup>11</sup> See USTelecom Comments at 5.

<sup>12</sup> ACA notes that it also would be impractical for the Commission – given the extensive amount of time and resources required – to undertake the activities of the state mapping authorities. A Commission data collection effort also would impose significant burdens on broadband providers.

<sup>13</sup> *Id.* at 7-8.

cap LECs to satisfy a best efforts standard in notifying broadband providers on the NBM and retain records proving that such efforts were made. In any event, the Commission can account for any concern about unreliable contact information in adopting the service requirement.

**USTelecom Proposal:** The Commission should not use the NBM as the “default determination” in cases where the challenger and the provider designated on the NBM each provide credible evidence regarding the status of a particular block but instead should make this decision in consultation with the relevant state mapping authority.<sup>14</sup>

**ACA Response:** It is important to understand that by not using the NBM as the “default determination,” the USTelecom proposal effectively undermines the credibility of the NBM. Like USTelecom, ACA understands that the NBM may contain inaccuracies, and it too wants to establish a process to correct these flaws.<sup>15</sup> However, the Commission has an interest in making the NBM a credible source of information upon which it can rely and operating from the premise that it is inaccurate conflicts with this objective. As such, the Commission should reject the USTelecom proposal. In addition, as ACA has already discussed, USTelecom’s proposed use of state mapping authorities by the Commission is not practical. Instead, the Commission should follow its proposed standard – whether it is more likely than not that a designation on the NBM is accurate – in reviewing the evidence and should use the NBM as the default determination when conflicting, credible evidence is presented.

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<sup>14</sup> *Id.* at 8.

<sup>15</sup> ACA believes that with regard to its members (wireline cable operators), most of the inaccuracies are the result of the member underreporting the presence of broadband.

**USTelecom Proposal:** “The Commission must establish technical standards for broadband service prior to implementing the Phase II challenge process.”<sup>16</sup>

**ACA Response:** ACA agrees that to serve an area a competing provider should meet all the Commission’s public interest obligations. ACA also agrees that metrics for latency, capacity, and price have not been precisely defined, and it is prepared to work with the Commission to develop these.<sup>17</sup> That said, the USTelecom proposal has the potential to open every census block in the country to challenge since the NBM is based only on broadband speed. That is an impractical and unacceptable outcome. Instead, ACA proposes that the Commission (1) should complete a proceeding to more precisely define latency, capacity, and price, (2) presume that cable operators meeting the speed benchmark also meet the latency, capacity, and price metrics, and (3) require any challenge based on the factors other than broadband speed as shown on the NBM to be based on a higher standard – clear and convincing evidence.<sup>18</sup> This will permit credible challenges based on these other factors while eliminating those that are more speculative.

**USTelecom Proposal:** The Commission should not require the submission of granular data on locations where service of 6/1.5 Mbps will be deployed within five years. The Commission also should not require at the time of election the submission of a preliminary plan

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<sup>16</sup> *Id.* at 9.

<sup>17</sup> On February 26, 2013, the Wireline Competition Bureau issued a Public Notice (DA 13-284) seeking comment on issues regarding service obligations for Phase II and determining who is an unsubsidized competitor.

<sup>18</sup> ACA notes that in Public Notice DA 13-284, the Wireline Competition Bureau proposes “to exclude from support calculations in the adopted model any census block that is served by a cable broadband provider that provides service meeting the defined speed threshold, with the rebuttable presumption subject to challenge in a challenge process.” (¶ 11)



of the locations that will be used to meet the 85 percent build out milestone of 4/1 Mbps service within three years.<sup>19</sup>

**ACA Response:** Both to ensure its broadband deployment objective is achieved and to protect against waste, the Commission has made accountability a priority of the Connect America Fund and has adopted various reporting and monitoring obligations to ensure the billions in support are properly spent.<sup>20</sup> As such, unless USTelecom can provide specific and sufficient evidence that an accountability obligation is so burdensome, the Commission should not be swayed by its arguments, especially when it comes to tracking locations where support is intended to be used.

### **III. FLAWS WITH THE RURAL ASSOCIATIONS PROPOSALS**

ACA only comments briefly on the challenge process proposed by the Rural Associations. As discussed earlier, the Rural Associations seek to completely alter the existing process of designating areas on the NBM and instead institute a mechanism that places a heavy burden on competing providers to come before state regulators to provide clear and convincing evidence that they are providing broadband service in an areas meeting the public interest obligations. Such a process is obviously excessive and extremely burdensome, especially for smaller cable operators. Instead, the same objectives sought by the Rural Associations can be largely achieved by the process proposed by the Commission, as refined by the proposals submitted by ACA.

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<sup>19</sup> *Id.* at 13.

<sup>20</sup> *See Connect America Fund*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 17663, ¶¶ 568-635 (2011), *pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

Respectfully submitted,



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